

NTSB Order No. EA-4996

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 18th day of September, 2002

Respondent.

OPINION AND ORDER

Respondent has appealed from the oral initial decision of Administrative Law Judge Patrick G. Geraghty, issued on May 1, 2001, following an evidentiary hearing.¹ The law judge affirmed an order of the Administrator, on finding that respondent had violated 14 C.F.R. 43.12(a)(1) of the Federal Aviation Regulations ("FARs," 14 CFR Part 43).² We deny the appeal as

² FAR Section 43.12(a)(1), as charged here, prohibits

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well as respondent's motion for oral argument, for which no need has been shown.

Respondent is charged with intentional falsification of an aircraft maintenance log. At the time, respondent was a mechanic supervisor for Alaska Airlines. The involved aircraft, which was being used in Part 121 service, was undergoing a "C" (heavy maintenance) check. Prior to respondent's arrival for his shift, scheduled engine work had been completed. Respondent and others were working to "clear" the aircraft so that it could be returned to revenue service as soon as possible. At some point after the "C" check engine maintenance, however, a new discrepancy had been logged, as follows: "Throttle split of $\frac{3}{4}$ knob throughout power range, increases toward T.O. [take off] power."³ In response to that entry, respondent and the quality control supervisor (a Mr. Ricarte), discussed how to resolve the discrepancy. According to the record before us, no one did any type of investigation of the

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intentionally false entries in any record or report that is required to be made, kept, or used to show compliance with any requirement under Part 43. There is no dispute that the record here was required.

³ Numerous issues have been and continue to be raised by respondent regarding the mechanic who logged this discrepancy, his position at the company, his reliability, his bias, his intentions, events at the facility at the time, and criminal investigations at Alaska Airlines following the crash of Alaska Airlines flight 261 and this mechanic's assistance in those investigations. We agree with the law judge that none of these issues bear on the case before us and we see no error in the law judge's related limiting of discovery and evidence. And, although no direct charge is made, we reject respondent's implication that the law judge played to the crowd at the hearing and denied respondent due process.

aircraft or further questioning of the maintenance crew who did the "C" check work or the mechanic who logged the discrepancy to determine whether a throttle split existed notwithstanding the previously performed maintenance.⁴ Instead, respondent and Mr. Ricarte, according to the latter's testimony, reviewed the "C" check paperwork and, based on it, apparently decided that the problem identified by the subsequently-logged discrepancy could not still exist in light of the earlier engine work.⁵ Instead of logging information reflecting such a judgment, Mr. Nanney wrote in the corrective action block of the log: "Trim accomplished per T/C [task card]⁶ 28771000 ops check good." He also checked "No" in response to the logbook query whether the discrepancy required inspection.

Hart v. McLucas, 535 F.2d 516, 519 (9th Cir. 1976), sets forth the elements of an intentional falsification charge: 1) a false representation; 2) in reference to a material fact; and 3) made with knowledge of its falsity. Respondent did not contest the materiality of the entry. The Administrator introduced

⁴ Respondent criticizes the law judge's refusal to allow testimony regarding the actual airworthiness of the aircraft. The law judge was correct, for the condition of the aircraft was not relevant to the task of determining whether respondent had made a knowingly-false entry concerning a logged discrepancy.

⁵ There is testimony that the mechanic who logged the discrepancy orally stated that the throttle split was $\frac{1}{2}$ knob, not $\frac{3}{4}$ knob. The record indicates that $\frac{1}{2}$ knob is within acceptable limits; $\frac{3}{4}$ is not. Again, there is no testimony or evidence that respondent or anyone else attempted to resolve the discrepancy with the mechanic.

⁶ A task card directs how work should be performed.

evidence to show that the entry was false because no actual maintenance work was done to correct the discrepancy and the entry states that it was. Counsel for the Administrator also introduced a section of the Alaska Airlines maintenance manual requiring that whoever completes the corrective action block on the log be "the person performing the work."

Respondent claims, based on varied theories, that there was no knowing falsification. He argues that the entry was true, that the work had been done, and offered testimony to show that the word "work" as it is used in the manual is not restricted to actual, hands-on maintenance, but can include review of paperwork and sign-off for tasks actually done by others. He argues that his consultation with others, including the aircraft's pilots, regarding the discrepancy, and his later correction of the log after an internal audit to clarify that the work had actually been done earlier, among other things, demonstrate his honesty.⁷

We agree with the law judge that a judgment as to whether respondent knowingly falsified the log is in no way dependent on such issues as the circumstances in which a supervisor can sign off on work done by others, the motives of respondent or of the mechanic who entered the discrepancy in the log, or the federal government's extensive investigations into maintenance practices at Alaska Airlines. The simple question here is whether

⁷ Respondent was not satisfied with the law judge's limitation on character evidence. We agree with the Administrator that more evidence of respondent's character would have been surplus.

respondent, who admittedly did not perform an engine trim or operational check, could reasonably believe that a log entry that on its face advised that he had done so would be understood by anyone reading it to mean that he had actually only reviewed the maintenance paperwork of those who had trimmed and checked the engine before the discrepancy he was seeking to resolve had been logged. This inquiry, we think, answers itself.⁸

We find no merit in respondent's argument that the Administrator failed to establish that he had the requisite intent to falsify the logbook. The plain meaning of a written entry is persuasive evidence of its author's intent, and where, as here, the factual context known to the author conclusively contradicts what he has written, the entry provides sufficient proof of intent to falsify.⁹ Respondent signed off a discrepancy involving engine controls based on work done before the discrepancy even was logged. As the law judge notes, this is the cart before the horse. Moreover, pursuant to the provisions of the relevant Alaska Airlines maintenance manual, respondent's entry with his signature indicated to anyone reading the log that

⁸ We have no basis for doubting respondent's ability to have made an entry that clearly communicated the conclusions he and his witness, Mr. Ricarte, apparently reached concerning the discrepancy. In this connection, simply adding the word "previously" after the word "trim" in the entry would have effectively removed any connotation that he had performed the procedure he now, by counsel, urges us to accept he was merely attempting to reference.

⁹ Because respondent did not testify in his own defense, there is no other direct evidence of his intent in making the logbook entry.

the existence of the discrepancy had been confirmed and that he had performed the trim correction.¹⁰ There is no evidence in the record to suggest that respondent did not intend his entry to be so read, and he was obviously aware that he had not accomplished what the entry reported.¹¹

Finally, respondent argues that the Administrator's order revokes his mechanic's certificate, not his airframe and powerplant (A&P) "license." The A&P authorization is a rating, not a certificate that stands alone. The Administrator's order specifically stated that it applied to respondent's "mechanic certificate No. 002388168 with airframe and powerplant ratings." The law judge's statement extending the revocation to "any other mechanic certificate held by" respondent, merely recognizes the common event that, between the initial order of revocation and the final administrative ruling, a certificate may be amended, supplemented, or updated. See, e.g., Administrator v. Reno, NTSB Order No. EA-3622 (1992) (sanction acts against certificate that is in force at the time order issues).

¹⁰ For why would he perform a correction if there were nothing wrong?

¹¹ We are fully aware of the testimony of co-workers to the effect that respondent believed that the discrepancy was bogus, and we have no basis for believing that respondent wanted to return the aircraft to service if there was a valid mechanical reason not to. Nevertheless, the fact that these co-workers believe that respondent simply wanted to clear the discrepancy by referring to earlier maintenance does not change the fact that he did not choose language that even remotely conveyed such a purpose.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's motion to strike attachments to respondent's brief that constitute new evidence is granted;
2. Respondent's request for oral argument is denied;
3. Respondent's appeal is denied; and
4. The revocation of respondent's certificate shall begin 30 days after the service date indicated on this opinion and order.¹²

CARMODY, Acting Chairman, and HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

¹² For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. 61.19(f).